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Division of Open Government  
Proposed Amendment to 940 CMR 29.00:  
Definition of "Knowing or Knowingly"  
Issued: December 23, 2011

The Attorney General is issuing a proposed regulation that would define the term "Knowing or Knowingly" with respect to the Open Meeting Law, G.L. c. 30A, §§ 18-25, and the Attorney General's Open Meeting Law regulations, 940 CMR 29.00. If adopted, this regulation would clarify the standard for a finding by the Office of the Attorney General of intentional violation of the Open Meeting Law. The proposed regulation is as follows:

Knowing or Knowingly means acting with specific intent to violate the law, acting with deliberate ignorance of the law's requirements, or acting in violation of the law where the public body or public body member has been informed previously by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General that such conduct violates the law. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered a knowing violation of [M.G.L. c. 30A, §§ 18 through 25](#).

The Open Meeting Law provides that "following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional." G.L. c. 30A, § 23(c). Pursuant to the Open Meeting Law, the Attorney General may "impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation." G.L. c. 30A, § 23(c)(1). The Attorney General's Open Meeting Law regulations also state that, if the Attorney General finds that a violation of the Open Meeting Law has occurred, the Attorney General may order "imposition of a fine upon the public body of not more than \$1,000 for each intentional violation." 940 CMR 29.07(3)(d).

An "intentional violation" is defined in the Open Meeting Law as "an act or omission by a public body or a member thereof, in knowing violation of the open meeting law." G.L. c. 30A, § 18. The Attorney General's Open Meeting Law regulations define an "intentional violation" as "an act or omission by a public body, or a member of a public body, that knowingly violates [the Open Meeting Law]. Conduct in violation of [the Open Meeting Law] shall be considered evidence of an intentional violation where the body or member has previously been informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08 that the conduct violates [the Open Meeting Law]." 940 CMR 29.02.

The Attorney General will hold a public hearing on the proposed regulation pursuant to G.L. c. 30A, § 2. The hearing will be held at One Ashburton Place, 21<sup>st</sup> Floor, Boston, MA., on January 19, 2012 from 3:00 p.m. to 5:00 p.m. Copies of the proposed amendment to the regulations may be found at [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting) or may be obtained at One Ashburton Place, 20<sup>th</sup> Floor, Boston, MA. If any member of the public wishing to attend this hearing seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Philip Mantyla at 617-963-2055, or at

[Philip.Mantyla@state.ma.us](mailto:Philip.Mantyla@state.ma.us).

The public is also encouraged to submit written comments on the proposed regulations. Comments should be limited to the proposed regulation only. Please direct comments to Amy Nable, Director, Division of Open Government, Office of the Attorney General, One Ashburton Place, 20<sup>th</sup> Floor, Boston, MA 02108 or by sending comments by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us). **Comments must be submitted by January 19, 2012 at 5:00 p.m.**